

Date of decision: 20.6.96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(20.6.96)

Mr. B. P. Tanna for the petitioner.
Ms. Sejal Mandavia for respondents.

C.A.V. JUDGMENT:

Heard the learned counsel for the parties.

The prayer made by the petitioners reads as under:

(A) to issue a writ declaring that the petitioners are doing the work of Compositors and are entitled to the pay scale of the Compositors with effect from March 1981;

(B) to declare that the work is being taken from the Asst.Compositors is that of the Compositors and are entitled to get the pay scale payable to Compositors;

(C) to declare that the Assistant Compositors are entitled to the pay scales of Compositors from March 1981 on and with effect from which date the Assistant Compositors are doing the work of Compositors.

The petitioners also made prayer for grant of interim relief, but interim relief has not been granted.

2. The petitioners have come up with the case in para 3 of the petition that there are 192 posts of Assistant Compositors. The petitioners pray that they are filing this writ petition in representative capacity and this court may permit them to prosecute the petition under Order 1 Rule 8 of the Code of Civil Procedure. I do not find any order of this court permitting the petitioners to file this petition in representative capacity for 192 Assistant Compositors.

3. Recruitment to the post of Compositor in the Printing and Stationery Department in the Government of Gujarat are regulated under the Compositor Recruitment Rules, 1976. These rules have been framed indisputably in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Recruitment to the post of Compositor in the Gujarat Subordinate Service, Class III of the Government Printing and Stationery Department is to be made either by promotion of a person of proved merit and efficiency from amongst persons who have been working as Asst. Compositor/Distributor for a period of about three years; or by direct selection. It is also not in dispute, and rightly so, that the post of Compositor is a post of higher status and pay-scale than the post of Assistant Compositor. It is a promotional post from the cadre of Assistant Compositors. In the writ petition the petitioners have not come up with the case that there is deficit number of compositors in the Department for all these times from 1981. In fact the petitioners have not given out in the writ petition the sanctioned strength of the Compositors as well as Assistant Compositors in the Department. It is not out of place to state here that the strength of the concerned posts is determined looking to the quantum of work available in the Department. The petitioners have come up

with the case that prior to rationalization in the year 1981 there were posts of Distributors and Compose Reservist. On March 27, 1981 these two posts were combined and it was given the nomenclature of Assistant Compositor. The petitioners made grievance that they are Assistant Compositors since 1981 and they are doing the work of Compositors and as such they are entitled for the pay-scale prescribed for the post of Compositor with effect from March 1981. The petitioners sought declaration that the work being taken from them is that of Compositor and as such they are entitled to the pay-scale of Compositor from March 1981. This claim of the petitioners cannot be accepted for obvious reasons. It is a question of fact whether the petitioners are doing the work of Compositors or not. Even the petitioners are not emphatic about their work because in page 11 of the writ petition they have stated that practically the Asst.Compositors are always doing the work of the Compositors. There is no material on record that since 1981 the petitioners are doing the work of Compositor or the respondents are taking from them the work of Compositor. By producing some documents the petitioners are claiming that this Court has to draw inference that the petitioners are continuously working as Compositors.

4. On the other hand the reply to the special civil application has to be taken into consideration where respondents have come up with the case that these are two distinct and separate posts with different pay-scales - one post higher in status and pay-scale which is also promotional post. Looking to the nomenclature of these posts - Compositor and Assistant Compositor - there seems to be thin distinction in their working, but the petitioners have to establish the fact that all the time they are doing the work of compositor and not of the Assistant Compositor. It has to be established as a fact. Even if it is established, then, the other question that arises for consideration is whether the petitioners are entitled to the pay-scale of compositor. What in substance the petitioners claim is that since March 1981 they should be treated as compositors, which cannot be done. At the most on the day on which the petitioners exclusively work as Compositors they may have a claim for difference of salary but not the status of compositor and the pay-scale of that post. Merely because the petitioners have for some days discharged the duties of compositor, they will not acquire the status of compositor, which is admittedly a promotional post. For promotion many things are to be taken into consideration, namely, availability of post, eligibility, standing to the test of proved merit and efficiency. But the petitioners' contention that as they do the work of Compositors, may be for some time or some days or for years, they automatically

become composers, cannot be accepted for two reasons. Firstly, then there will be no difference between the two posts which the Rule making authorities have created and secondly the rules framed under Article 309 will become nugatory. Yet there is another important matter, that a person can claim promotion only when he stands the test of proved merit and efficiency. Whereas as per the claim of the petitioners any person whether he is of proved merit and efficiency or not, merely by discharging the duties of compositor he will become Compositor. It is not the intention of the Rule making authority nor it could be so. In such cases the declaration as prayed for in the writ petition cannot be granted by this court sitting under Article 226 of the Constitution of India. However, the claim on the basis of equal pay for equal work has to be proved and in case it is proved then the petitioners or any of them may be entitled to the difference of salary.

5. The Supreme Court in the case of Sanjay Verma vs. Union of India, reported in 1994(2) SCC 521, has held that on the basis of the qualification two pay-scales can be provided for the same post. When the posts are same, meaning thereby, the holders of the posts in the lower pay-scale and higher pay-scale are doing the same work, the principle of equal pay for equal work may not be accepted, the how it can be accepted in the cases where one post is higher in status and promotional post.

6. The petitioners have no legal or fundamental right on the post of Compositor. They do not acquire any right to get the pay-scale and status of compositor which is a promotional post and the criteria for promotion is proved merit and efficiency.

7. In the result this writ petition fails and the same is dismissed.

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